

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

STATE OF DELAWARE,	:	
	:	I.D. No. 1005008059
v.	:	
	:	
ISAIAH McCOY,	:	
	:	
Defendant.	:	

Submitted: June 20, 2011
Decided: November 21, 2011

ORDER

Upon Defendant's Motion in Limine
Precluding Gang-Related Evidence.
Granted.

R. David Favata, Esquire and Deborah Weaver, Esquire, Department of Justice,
Dover, Delaware; attorneys for the State.

Lloyd A. Schmid, Esquire and Suzanne MacPherson-Johnson, Esquire, Dover,
Delaware; attorneys for the Defendant.

WITHAM, R.J.

The issue before the Court is whether the State's gang-related evidence, specifically Rekeisha Williams's assertion that Defendant stated he was a member of the "Bloods" street gang and would harm her if she went to the police, is admissible.

FACTS

This motion *in limine* is presented in the larger context of the forthcoming capital murder trial of Isaiah McCoy (hereinafter "Defendant"). The State alleges that Defendant shot and killed James Mumford during a drug deal in which the State's witness, Rekeisha Williams (hereinafter "Williams"), was present. At issue is whether the State should be allowed to present evidence that Defendant was a member of the "Bloods" street gang. Specifically, Williams would testify that Defendant told her that he was a member of the "Bloods" and that the "Bloods" would harm her if she told anyone, especially the police, what happened in the Rodney Village Bowling Alley parking lot on May 4, 2010.

Standard of Review

D.R.E. 403 states, "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury, or by considerations of undue delay, waste of time or needless presentation of cumulative evidence."

D.R.E. 404(b) states, "Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of

mistake or accident.”

DISCUSSION

In support of his motion *in limine*, Defendant asserts that Williams’s gang-related testimony would violate D.R.E. 403 and 404. Defendant states that D.R.E. 404(b) prevents admission into evidence of alleged prior bad acts.

The State asserts the relevance of Williams’s discussion of Defendant’s affiliation with the “Bloods” as it would go to her credibility and state of mind regarding the seriousness of Defendant’s alleged threat and why her story has varied from her first statement to the police on May 7, 2010.

D.R.E. 404(b) prevents the State from offering evidence of defendant’s alleged uncharged misconduct to support a general inference of bad character or propensity to commit certain acts.¹ The second sentence of D.R.E. 404(b) does, however, allow for such evidence for purposes other than proving propensity, “such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.”²

In *Getz v. State*, the Delaware Supreme Court enumerated a six-part analysis governing the admissibility of prior bad acts evidence. For the purposes of this motion *in limine*, the Court notes that membership in the “Bloods” street gang, although not a crime in and of itself, has the traditional social connotations of a bad

¹*Getz v. State*, 538 A.2d 726, 730 (Del. 1988).

²*Id.* (quoting D.R.E. 404(b)).

actor and of a general criminal nature. Further, Defendant's alleged threats toward Williams would likely fit within several sections of Title 11 of the Delaware Code. Thus, the *Getz* analysis is certainly applicable to this case. The Court takes each factor in turn.

"The evidence of other crimes must be material to an issue or ultimate fact in dispute in the case."³ Evidence of Defendant's "Bloods" membership and alleged threats are certainly material as to why Williams changed her story and to her ultimate credibility in the eyes of the jury. The State contends that she lied initially because she was afraid of reprisal from the Bloods. Defendant believes that Williams has been inconsistent with her story because she is a liar and lacks credibility. Thus, Williams's testimony regarding Defendant's alleged gang affiliation is material to an issue in dispute.

"The evidence of other crimes must be introduced for a purpose sanctioned by Rule 404(b) or any other purpose not inconsistent with the basic prohibition against evidence of bad character or criminal disposition."⁴ The State argues that the evidence at bar has nothing to do with character or disposition. Counsel for the State asserts that testimony of the threat is important for the jury to understand Williams' state of mind and why she was not initially truthful. These are not insignificant issues in this case, and the Court does not believe that this is a backdoor tactic for character

³*Id.* at 734.

⁴*Id.*

or disposition on the part of the Prosecution.

“The other crimes must be proved by evidence which is ‘plain, clear, and conclusive.’”⁵ This factor weighs against the State. The State makes no claim that this is a gang related crime, and the only evidence of Defendant’s gang affiliation that the Court is aware of is the word of Williams.

“The other crimes must not be too remote in time from the charged offense.”⁶ The alleged threat and Defendant’s alleged gang affiliation are not too remote in time from the charge of capital murder.

“The Court must balance the probative value of such evidence against its unfairly prejudicial effect, as required by D.R.E. 403.”⁷ The Delaware Supreme Court provides a nine part test for applying D.R.E. 403 balancing to D.R.E. 404(b) evidence.⁸ The factors are as follows:

(1) [T]he extent to which the point to be proved is disputed; (2) the adequacy of proof of the prior conduct; (3) the probative force of the evidence; (4) the proponent’s need for the evidence; (5) the availability of less prejudicial proof; (6) the inflammatory or prejudicial effect of the evidence; (7) the similarity of the prior wrong to the charged offense; (8) the effectiveness of limiting instructions; and (9) the extent to which

⁵*Id.*

⁶*Id.*

⁷*Id.*

⁸*Deshields v. State*, 706 A.2d 502, 506-07 (Del. 1998).

prior act evidence would prolong the proceedings.⁹

The Court focuses on several factors favorable to Defendant. For the second factor, Williams's word alone is not adequate in this context. On the fourth factor, so long as Williams changing her story is not brought up by Defendant, the Williams' gang-related evidence is not necessary. The inflammatory or prejudicial effect, the sixth factor, is of the most concern to the Court. That the "Bloods" are a fearsome and degenerate street gang does not need further elaboration by the Court. The mere mention of Defendant's association has the potential to prejudice jury members. On the seventh factor, the charge against Defendant is not alleged to be a gang-related offense, so Defendant's alleged gang membership has no similarity to the charged offense. Regarding the eighth factor, the Court questions the effectiveness of a limiting instruction in this context. It would not be a stretch to say that a jury would be more likely to convict a gang member than a non-gang member despite the instructions of the Court. Lastly, on the ninth factor, allegations as to Defendant's gang affiliation would surely lead to a trial within a trial. Several additional witnesses would likely be called to sort out the allegations. With all of these considerations weighing against admission of this evidence, the Court finds that the State must refrain from presenting gang-related evidence with the caveat discussed below.

Despite the Court's ruling that the State is prohibited from presenting gang-

⁹*Id.*

related evidence, the Court will allow such evidence should the Defendant open the door to it. If Defendant challenges Williams directly as to why she told a different story to the police initially, then the State must be allowed to defend the credibility of Williams. Such a challenge to Williams' credibility would tip the D.R.E. 403 probative versus prejudicial balance in favor of the State.

In such an event, as noted in *Getz*, "Because such evidence is admitted for a limited purpose, the jury should be instructed concerning the purpose for its admission as required by D.R.E. 105."¹⁰ The following limiting instruction is crafted for such a purpose:

You have heard testimony that the Defendant allegedly claimed he is a member of the "Bloods" gang. You are instructed that this testimony is not, I repeat, not to be considered by you as evidence of the Defendant's character or propensity to commit crimes or bad acts. It is to be used solely for the purpose of assessing the credibility of Rekeisha Williams in light of her conflicting statements to the police.

¹⁰538 A.2d 726, 734.

State v. Isaiah McCoy

I.D. No. 1005008059

November 21, 2011

CONCLUSION

Defendant's motion *in limine* is granted with the caveat that Defendant may still open the door to the evidence by specifically questioning Williams' credibility regarding the variation of her accounts to police of the events surrounding the alleged murder of James Mumford.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.

Resident Judge

WLW/dmh

oc: Prothonotary

xc: Counsel

File